

**CITY OF NEWPORT, KY  
REGULAR MEETING OF THE BOARD OF COMMISSIONERS**

**December 13, 2021, 7:00 PM**

Newport Municipal Building, 998 Monmouth Street, 1<sup>st</sup> Floor Multi-Purpose Room

**AGENDA**

**NOTICE TO THE PUBLIC**

*Comments about city service issues not on the agenda are allowed during the public forum portion of regular meetings. When recognized, please state your name for the record and limit the time used to present your remarks. Orders and Resolutions are passed by one vote, and Ordinances require two readings to be adopted.*

**CALL TO ORDER**

Invocation, Pledge of Allegiance, Roll Call

**PRESENTATIONS, AWARDS, PROCLAMATIONS**

- Newport 225, Scott Clark Historic Preservation Officer
- Newport Walking Tour, NKU, Mark Neikirk Scripps Howard Center for Civic Engagement

**PERSONNEL ORDERS**

**COMMISSIONERS ORDER R-2021-103**

AN ORDER OF THE BOARD OF COMMISSIONERS OF THE CITY OF NEWPORT, KENTUCKY, PROMOTING ENGINEER/MEDIC AUDREY OWCZARZAK TO THE RANK OF LIEUTENANT IN THE NEWPORT FIRE DEPARTMENT EFFECTIVE NOVEMBER 14, 2021

**COMMISSIONERS ORDER R-2021-104**

AN ORDER OF THE BOARD OF COMMISSIONERS OF THE CITY OF NEWPORT, KENTUCKY, PROMOTING ENGINEER/MEDIC RYAN S. WHALEY TO THE RANK OF LIEUTENANT IN THE NEWPORT FIRE DEPARTMENT EFFECTIVE NOVEMBER 14, 2021

**COMMISSIONERS ORDER R-2021-105**

AN ORDER OF THE BOARD OF COMMISSIONERS OF THE CITY OF NEWPORT, KENTUCKY, APPOINTING SEAN BREITENSTEIN TO THE POSITION OF FIRE/MEDIC GRADE 1 IN THE NEWPORT FIRE DEPARTMENT EFFECTIVE DECEMBER 14, 2021

**PUBLIC HEARINGS**

None

**PUBLIC FORUM**

**APPROVAL OF MINUTES**

Regular Meeting Minutes November 15, 2021

Special Meeting Minutes December 3, 2021

## **OLD BUSINESS**

### **COMMISSIONERS ORDINANCE O-2021-020**

AN ORDINANCE OF THE BOARD OF COMMISSIONERS OF THE CITY OF NEWPORT, KENTUCKY AMENDING SECTION 116B.03 OF THE CODE OF ORDINANCES REGARDING PHOTOGRAPHING AND RECORDING OF ITEMS RECOVERED PURSUANT TO THE LEADS ONLINE ELECTRONIC REPORTING REQUIREMENTS

## **NEW BUSINESS**

### **COMMISSIONERS ORDER R-2021-106**

AN ORDER OF THE BOARD OF COMMISSIONERS OF THE CITY OF NEWPORT, KENTUCKY (THE "CITY") AUTHORIZING THE EXECUTION OF A MEMORANDUM OF AGREEMENT BETWEEN THE CITY AND NEWPORT ELEVEN LLC (THE "COMPANY") RELATING TO THE ACQUISITION AND CONSTRUCTION OF A RESIDENTIAL BUSINESS DISTRICT AS DESIGNATED BY THE CITY (THE "PROJECT"); AGREEING TO UNDERTAKE THE ISSUANCE OF INDUSTRIAL BUILDING REVENUE BONDS AT THE APPROPRIATE TIME TO PAY THE COSTS OF ACQUIRING AND CONSTRUCTING SAID PROJECT AND FACILITIES; AND TAKING OTHER PRELIMINARY ACTION

### **COMMISSIONERS ORDER R-2021-107**

AN ORDER OF THE BOARD OF COMMISSIONERS OF THE CITY OF NEWPORT, KENTUCKY, AUTHORIZING THE ISSUANCE OF UP TO \$18,500,000 MAXIMUM REVENUE BONDS, SERIES 2021 (OVATION MUSIC HOTEL PROJECT), IN ORDER TO ASSIST OVATION MUSIC HOTEL, LLC, OR ASSIGNS, TO FINANCE THE ACQUISITION, CONSTRUCTION AND EQUIPPING OF AN INDUSTRIAL BUILDING FACILITY LOCATED WITHIN THE CITY OF NEWPORT, KENTUCKY AND TO IMPROVE SAID FACILITY; AUTHORIZING THE ISSUANCE OF ADDITIONAL BONDS; PROVIDING FOR THE PLEDGE OF REVENUES FOR THE PAYMENT OF SAID BONDS; AUTHORIZING A LEASE AGREEMENT BETWEEN THE CITY OF NEWPORT, KENTUCKY AND OVATION MUSIC HOTEL, LLC, OR ASSIGNS, WITH RESPECT TO THE FACILITY; AUTHORIZING A TRUST INDENTURE APPROPRIATE FOR THE PROTECTION AND DISPOSITION OF SUCH REVENUES AND FURTHER TO SECURE THE PAYMENT OF SAID BONDS; AUTHORIZING A BOND PURCHASE AGREEMENT; AND AUTHORIZING A HOME OFFICE PAYMENT AGREEMENT

### **COMMISSIONERS ORDER R-2021-108**

AN ORDER OF THE BOARD OF COMMISSIONERS OF THE CITY OF NEWPORT, KENTUCKY AUTHORIZING THE ISSUANCE OF UP TO \$130,000,000 PRINCIPAL AMOUNT OF CITY OF NEWPORT, KENTUCKY TAX INCREMENT REVENUE BONDS (CPX NEWPORT COMMERCIAL DEVELOPMENT, LLC PROJECT); AUTHORIZING THE EXECUTION AND DELIVERY OF A TRUST INDENTURE SECURING SUCH BONDS; AUTHORIZING THE EXECUTION AND DELIVERY OF A FINANCING AGREEMENT; AUTHORIZING THE EXECUTION AND DELIVERY OF A BOND PURCHASE AGREEMENT; AUTHORIZING THE EXECUTION AND DELIVERY OF A LEASE AGREEMENT; AUTHORIZING THE EXECUTION AND DELIVERY OF A TAX REGULATORY AGREEMENT; AND OTHER DOCUMENTS AND TAKING OTHER RELATED ACTION

**COMMISSIONERS ORDER R-2021-109**

AN ORDER OF THE BOARD OF COMMISSIONERS OF THE CITY OF NEWPORT, KENTUCKY AUTHORIZING AND APPROVING A CONTINUING CREDIT OF THE OCCUPATIONAL LICENSE FEE FOR NEW EMPLOYEES AS PART OF AN ECONOMIC DEVELOPMENT PROJECT BY ADT, LLC AS SUCCESSOR IN INTEREST TO DEFENDER SECURITY SYSTEM COMPANY UNDER THE KENTUCKY BUSINESS INVESTMENT PROGRAM AS PREVIOUSLY APPROVED

**COMMISSIONERS ORDER R-2021-110**

AN ORDER OF THE BOARD OF COMMISSIONERS OF THE CITY OF NEWPORT, KENTUCKY AUTHORIZING CITY MANAGER THOMAS J. FROMME TO EXECUTE A MEMORANDUM OF AGREEMENT WITH NEW RIFF DISTILLING, LLC FOR PARTICIPATION IN THE CITY OF NEWPORT'S JOB DEVELOPMENT INCENTIVE PROGRAM (JDIP) PURSUANT TO SECTION 37.212 ET. SEQ. OF THE CODE OF ORDINANCES

**COMMISSIONERS ORDER R-2021-111**

AN ORDER OF THE BOARD OF COMMISSIONERS OF THE CITY OF NEWPORT, KENTUCKY AUTHORIZING CITY MANAGER THOMAS J. FROMME TO ENTER INTO AND AN AGREEMENT WITH MADISON TREE CARE AND LANDSCAPING, INC FOR ZONAL TREE MAINTENANCE

**COMMISSIONERS ORDER R-2021-112**

AN ORDER OF THE BOARD OF COMMISSIONERS OF THE CITY OF NEWPORT, KENTUCKY ACCEPTING THE BID PROPOSAL OF IPS GROUP, INC. REGARDING SOFTWARE AND ADD ON EQUIPMENT TO THE CITY VEHICULAR PARKING KIOSKS

**COMMISSIONERS ORDER R-2021-113**

AN ORDER OF THE BOARD OF COMMISSIONERS OF THE CITY OF NEWPORT KENTUCKY AUTHORIZING THE CITY MANAGER TO EXECUTE A ONE KENTUCKY OPIOID SETTLEMENT MEMORANDUM OF UNDERSTANDING AND THE ACCOMPANYING SUBDIVISION (DISTRIBUTOR AND JANSSEN) SETTLEMENT PARTICIPATION FORMS FOR THE CITY'S PARTICIPATION IN THE NATIONAL OPIOIDS SETTLEMENT

**COMMISSIONERS ORDINANCE O-2021-021**

AN ORDINANCE OF THE BOARD OF COMMISSIONERS OF THE CITY OF NEWPORT, KENTUCKY ENACTING AND ADOPTING A SUPPLEMENT TO THE CODE OF ORDINANCES OF THE CITY OF NEWPORT, KENTUCKY

## DEPARTMENT HEAD COMMENTS

## CITY MANAGER COMMENTS

## BOARD OF COMMISSIONERS COMMENTS

## ADJOURNMENT

### ***Board of Commissioners Scheduled Meetings 2022:***

- January 24
- February 14 (Caucus)
- February 28
- March 14 (Caucus)
- March 28
- April 11 (Caucus)
- April 25
- May 9 (Caucus)
- May 23
- June 27
- July 18
- August 22
- September 19
- October 3 (Caucus)
- October 24
- November 21
- December 12



0-2021-020

AN ORDINANCE OF THE BOARD OF COMMISSIONERS OF THE CITY OF NEWPORT, KENTUCKY AMENDING SECTION 116B.03 OF THE CODE OF ORDINANCES REGARDING PHOTOGRAPHING AND RECORDING OF ITEMS RECOVERED PURSUANT TO THE LEADS ONLINE ELECTRONIC REPORTING REQUIREMENTS

BE IT ORDAINED BY THE BOARD OF COMISSIONERS OF THE CITY OF NEWPORT, KENUKCY, as follows:

SECTION I

That Section 116B.03 of the Code of Ordinances shall be and is hereby amended to read, as follows:

CHAPTER 116B: LEADS ONLINE ELECTRONIC REPORTING REQUIREMENT

SECTION 116B.03 PHOTOGRAPHING AND RECORDING OF ITEMS RECOVERED.

(A) Every business entity and every individual subject to the provisions hereof shall be required, if they do not do so already, to take and maintain for inspection by or transmission to the City of Newport Police Department, a digital photograph of each and every item of merchandise bought, sold, bartered, exchanged, acquired, traded and/or consigned hereunder, including the serial number of all items of merchandise having a serial number affixed to the merchandise.

(B) The business entity shall also record the serial number of all items of merchandise having a serial number affixed to the merchandise and which shall be maintained for inspection by the City of Newport Police Department upon request.

SECTION II

That this Ordinance shall be signed by the Mayor, attested to by the City Clerk, recorded, published and effective upon publication.

PASSED: 1<sup>st</sup> reading: December 3, 2021

PASSED: 2<sup>nd</sup> reading: December 13, 2021

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THOMAS J. GUIDUGLI, JR., MAYOR

ATTEST:

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JANIE PATTERSON, CITY CLERK

PUBLISHED:

COMMISSIONERS' ORDER NO. B-2021-106

AN ORDER OF THE BOARD OF COMMISSIONERS OF THE CITY OF NEWPORT, KENTUCKY (THE "CITY"), AUTHORIZING THE EXECUTION OF A MEMORANDUM OF AGREEMENT BETWEEN THE CITY AND NEWPORT ELEVEN LLC (THE "COMPANY") RELATING TO THE ACQUISITION AND CONSTRUCTION OF A RESIDENTIAL PROJECT TO BE LOCATED WITHIN A DOWNTOWN BUSINESS DISTRICT AS DESIGNATED BY THE CITY (THE "PROJECT"); AGREEING TO UNDERTAKE THE ISSUANCE OF INDUSTRIAL BUILDING REVENUE BONDS AT THE APPROPRIATE TIME TO PAY THE COSTS OF ACQUIRING AND CONSTRUCTING SAID PROJECT AND FACILITIES; AND TAKING OTHER PRELIMINARY ACTION.

WHEREAS, Newport Eleven LLC, a Kentucky limited liability company (the "Company"), proposes the acquisition and construction of a residential project to be located within a designated downtown business district of the City, and Campbell County, Kentucky on property located in the City commonly referred to as the Northern Lights Development (the "Project"), as provided for in Section 103.200 of the Kentucky Revised Statutes, and in this connection it has been determined that the City may assist the Company by causing the acquisition and construction of the Project and by entering into at the appropriate time a lease agreement with reference thereto pursuant to authority of Sections 103.200 to 103.285, inclusive, of the Kentucky Revised Statutes (collectively, the "Act"), all in furtherance of the purposes of the Act and the public benefit of the residents and inhabitants of the City; such lease agreement to be upon such terms and conditions as the Act may require and the City may deem advisable; and,

WHEREAS, the acquisition and construction of the Project by the Company will encourage the expansion of commerce in accordance with the public policy of the Commonwealth of Kentucky by promoting the economic development of the Commonwealth of

Kentucky and the City, will relieve conditions of unemployment, will encourage the increase of commerce and will improve the economic welfare of the people of the City; and,

WHEREAS, the City is further authorized by the Act to issue bonds, which term under the Act encompasses bonds, variable rate bonds, commercial paper bonds, bond anticipation notes or any other obligations for the payment of money issued by a city, county or other authority pursuant to the Act, for the purpose of defraying the cost of acquiring and constructing an industrial building or buildings, as defined in the Act; discussions have occurred between representatives of the Company and the City incident to the issuance of industrial building revenue bonds by the City; the City has agreed with the Company to issue such bonds upon compliance by the Company with certain conditions, requirements and obligations, and subject to the approval of the City of the terms of all agreements, ordinances and other documents required incident to said bond issue; and the City has authorized the Company to proceed with the acquisition and construction of the Project, subject to reimbursement of the costs of the Project from the proceeds of such bonds, when, as and if issued; and,

WHEREAS, based upon an estimate of the costs of the Project, the City proposes to issue its industrial building revenue bonds in one or more series as determined by the Company and agreed to by the City in an amount not to exceed Eighteen Million Dollars (\$18,000,000) (the "Bonds"), such Bonds to be sold and delivered by the City to pay the costs of the Project, together with costs incident to the authorization, sale and issuance of such Bonds, but with such contributions from the Company as may be necessary; and,

WHEREAS, the City proposes to enter into at the appropriate time a lease agreement with the Company with respect to the Project, whereby the Company will covenant and agree to pay amounts sufficient to provide for the payment of principal of and premium, if any, and

interest on the Bonds, together with all trustee and paying agents' fees in connection with the Bonds as the same become due and payable; the liability of the Company under this instrument or any other instrument related to the issuance of the Bonds shall be limited to its interest in the Project to be financed thereby and no party shall have the right to obtain payment from the Company or from any assets of the Company other than such Project; and,

WHEREAS, it is deemed necessary and advisable that a Memorandum of Agreement between the City and the Company be executed setting forth the preliminary agreements of the parties with respect to the acquisition and construction of the Project, the issuance of the Bonds to defray the costs thereof and the payments to be made by the Company with respect to the Project;

NOW, THEREFORE, BE IT ORDERED BY THE BOARD OF COMMISSIONERS OF THE CITY OF NEWPORT, KENTUCKY, AS FOLLOWS:

#### SECTION I

Section 1. It is hereby found, determined and declared that (i) the recitals set forth in the preamble to this Order, which are incorporated in this Section by reference, are true and correct; (ii) the total amount of money necessary to be provided by the City for the acquisition and construction of the Project to be financed by the Bonds, in one of more series of Bonds, will not exceed Eighteen Million Dollars (\$18,000,000); (iii) the Company has represented that it will have sufficient financial resources to acquire and construct the Project and to place it in operation and to continue to operate, maintain and insure the Project throughout the term of the Bond issue, meeting when due the obligations of the proposed lease agreement; and (iv) sufficient safeguards will be provided by the lease agreement to insure that all money provided

by the City from the proceeds of the sale of the Bonds will be expended by way of direct expenditure or reimbursement, solely and only for the purposes of the Project.

Section 2. It is hereby found, determined and declared that the cost of acquiring and constructing the Project, which Project is more fully set forth in EXHIBIT A attached hereto and incorporated herein by reference, will be paid out of the proceeds of the Bonds and such contributions of the Company as may be necessary to complete the Project as defined in the lease agreement to be executed by and between the City and the Company at the appropriate time pursuant to the Act; **THAT NONE OF THE BONDS WILL BE GENERAL OBLIGATIONS OF THE CITY; THAT NEITHER THE BONDS NOR THE INTEREST THEREON SHALL CONSTITUTE OR GIVE RISE TO ANY INDEBTEDNESS OF THE CITY OR ANY CHARGE AGAINST ITS GENERAL CREDIT OR TAXING POWER, BUT THAT THE BONDS AND THE PAYMENT OF INTEREST THEREON SHALL BE SECURED AND PAYABLE SOLELY AND ONLY BY A PLEDGE OF AMOUNTS TO BE PAID BY THE COMPANY UNDER SUCH LEASE AGREEMENT; AND THAT NO PART OF SAID COSTS WILL BE PAYABLE OUT OF ANY GENERAL FUNDS, REVENUES, ASSETS, PROPERTIES OR OTHER CONTRIBUTIONS OF THE CITY.**

Section 3. In order to induce the acquisition and construction of the Project in the City with the resultant public benefits which will flow therefrom, it is deemed necessary and advisable that the Memorandum of Agreement hereinafter referred to be approved and executed for and on behalf of the City. Accordingly, the Memorandum of Agreement by and between the Company and the City substantially in the form and with the contents set forth in EXHIBIT B attached hereto and incorporated herein by reference is hereby approved and the Mayor is hereby authorized and directed to execute and deliver said Memorandum of Agreement.

Section 4. Inasmuch as the Project is to be acquired and constructed in order to conform to the requirements of the Company, so that the Company may provide additional housing uses thus furthering economic development and employment to citizens and residents of the local community, and inasmuch as the Company is able to plan, acquire and construct the Project and possesses more expertise in such matters, it is hereby found, determined and declared that acquisition and construction of the Project should be undertaken or caused to be undertaken by the Company. Accordingly, the Company is hereby authorized to formulate and develop plans for the acquisition and construction of the Project and to enter into such contracts and undertakings as may be required for the acquisition and construction of the Project. Reimbursements made to the Company after the receipt of the proceeds of the sale of the proposed Bond issue by the City shall be subject to the certifications by qualified persons to be designated by the Company as specified in the lease agreement to be entered into by the City and the Company at the appropriate time pursuant to the Act.

Section 5. This Order and the Memorandum of Agreement approved hereby constitute the present official intent of the City to issue the Bonds at a later date.

Section 6. Keating Muething & Klekamp PLL, Cincinnati, Ohio, is hereby approved as local Bond Counsel. Local Bond Counsel is authorized and directed to take any legal action necessary or appropriate in connection with the issuance of the Bonds. The City Attorney is authorized and directed to assist Local Bond Counsel in any appropriate manner.

Section 7. No City funds shall be expended on the Project, except such as are derived from Bond proceeds.

Section 8. To the extent any resolution, order or ordinance, or part thereof is in conflict, the provisions of this Order shall prevail and be given effect.

Section 9. This Order shall be in full force and effect from and after its adoption as provided by law.

SECTION II

That this Order shall be signed by the Mayor, attested to by the City Clerk, recorded and be effective upon adoption.

ADOPTED:

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THOMAS L. GUIDUGLI, JR., MAYOR

ATTEST:

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JANIE PATTERSON, CITY CLERK



**COMMISSIONERS ORDER NO. R-2021-107**

AN ORDER OF THE BOARD OF COMMISSIONERS OF THE CITY OF NEWPORT, KENTUCKY, AUTHORIZING THE ISSUANCE OF UP TO \$18,500,000 MAXIMUM AGGREGATE PRINCIPAL AMOUNT TAXABLE INDUSTRIAL BUILDING REVENUE BONDS, SERIES 2021 (OVATION MUSIC HOTEL PROJECT), IN ORDER TO ASSIST OVATION MUSIC HOTEL, LLC, OR ASSIGNS, TO FINANCE THE ACQUISITION, CONSTRUCTION AND EQUIPPING OF AN INDUSTRIAL BUILDING FACILITY LOCATED WITHIN THE CITY OF NEWPORT, KENTUCKY AND TO IMPROVE SAID FACILITY; AUTHORIZING THE ISSUANCE OF ADDITIONAL BONDS; PROVIDING FOR THE PLEDGE OF REVENUES FOR THE PAYMENT OF SAID BONDS; AUTHORIZING A LEASE AGREEMENT BETWEEN THE CITY OF NEWPORT, KENTUCKY AND OVATION MUSIC HOTEL, LLC, OR ASSIGNS, WITH RESPECT TO THE FACILITY; AUTHORIZING A TRUST INDENTURE APPROPRIATE FOR THE PROTECTION AND DISPOSITION OF SUCH REVENUES AND FURTHER TO SECURE THE PAYMENT OF SAID BONDS; AUTHORIZING A BOND PURCHASE AGREEMENT; AND AUTHORIZING A HOME OFFICE PAYMENT AGREEMENT.

WHEREAS, the City of Newport, Kentucky (the "Issuer") is by virtue of the laws of the Commonwealth of Kentucky, including Chapter 103 of the Kentucky Revised Statutes, and other authorities mentioned therein, authorized and empowered, among other things, (a) to assist in the financing of costs of industrial building facilities located within the boundaries of the Issuer, (b) to enter into an agreement with the lessee of such facilities providing for revenues sufficient to pay the principal of and interest and any premium on such revenue bonds, including the issuance of refunding bonds (c) to secure such revenue bonds by a trust agreement or indenture between the Issuer and a corporate trustee, and by a pledge and assignment of such revenues, as provided for herein, and (d) to enact the Bond Legislation and enter into the Indenture and the Agreement, as hereinafter identified, upon the terms and conditions provided therein; and

WHEREAS, Ovation Music Hotel, LLC (the "Company") is a Kentucky limited liability company; and

WHEREAS, it is hereby determined by this Legislative Authority that the acquisition, construction and equipping of the Project, and improvement to said Project will require the issuance, sale and delivery of the Project Bonds in the maximum aggregate principal amount of \$18,500,000 and hereafter may, with the prior written consent of the Issuer, involve the Issuer's issuance, sale and delivery of Additional Bonds on a parity therewith, all of which Project Bonds and Additional Bonds shall be equally and ratably payable and secured as provided herein and in the Indenture authorized herein; and

NOW, THEREFORE, BE IT ORDERED BY THE CITY OF NEWPORT, KENTUCKY:

SECTION I

That the provisions hereof shall be, as follows:

Section 1. Definitions. All defined terms used herein and not otherwise defined herein shall have the respective meanings given to them in the Trust Indenture with respect to the Project Bonds (the “Indenture”) between the Issuer and The Huntington National Bank, and its successors in trust, as trustee (the “Trustee”).

Any reference herein to the Issuer, to the Legislative Authority, or to any officers thereof, shall include any person or entity which succeeds to its or their duties or responsibilities pursuant to or by operation of law. Any reference to a section or provision of the Kentucky Constitution or the Act or to a section, provision or chapter of the Kentucky Revised Statutes shall include such section or provision or chapter as from time to time amended, modified, revised, supplemented or superseded; provided, however, that no such change in the Constitution or laws (a) shall alter the obligation to pay the Bond service charges in the amounts and manner, at the times and from the sources provided in this Bond Legislation and the Indenture, except as otherwise herein permitted or (b) shall be deemed applicable by reason of this provision if such change would in any way constitute an impairment of the rights of the Issuer, the Trustee or the Company under the Agreement or the Indenture.

Unless the context shall otherwise indicate, words importing the singular number shall include the plural number, and vice versa, and the terms “hereof”, “hereby”, “hereto”, “hereunder”, and similar terms, mean this Bond Legislation.

Section 2. Determinations of Legislative Authority. The Legislative Authority hereby determines that the Project is an “industrial building” as that term is defined in Section 103.200 of the Kentucky Revised Statutes, and will benefit the people of the Issuer by creating or preserving jobs and employment opportunities and promoting the commercial and economic development of the Issuer and the State.

Section 3. Authorization and Terms of Project Bonds.

(a) Authorization. It is hereby determined to be necessary to, and the Issuer shall issue, sell and deliver, as provided and authorized herein and pursuant to the authority of the Act, up to \$18,500,000 maximum aggregate principal amount of Project Bonds for the purpose of providing funds to be used to finance the Project and to finance improvements to said Project and to pay costs of issuance of said Project Bonds. The Project is and shall be owned by Issuer and leased to the Company. Said Project Bonds shall be issued in a single series and shall be designated “Taxable Industrial Building Revenue Bonds, Series 2021 (Ovation Music Hotel Project)” (the “Project Bonds”). The Issuer may also issue, sell and deliver Additional Bonds on a parity with the Project Bonds for the purposes and in the manner provided in the Indenture. The proceeds of the Project Bonds shall be applied (i) to provide funds to finance the acquisition, construction and installation of the Project and (ii) to pay reasonable and customary closing costs associated with the issuance of the Project Bonds.

(b) Terms. The Project Bonds shall be issued in the forms and denominations, shall be numbered, dated and payable as provided in the Indenture. The Project Bonds shall mature as provided in the Indenture, and have such terms, bear such interest, and be subject to mandatory and optional redemption as provided in the Indenture. This Legislative Authority hereby fixes

and establishes the interest rate in effect from time to time on the Project Bonds in the manner and pursuant to the provisions of the Indenture.

The form of the Project Bonds attached to the Indenture, subject to appropriate insertions and revisions in order to comply with the provisions of the Indenture, is hereby approved, and when the same shall be executed on behalf of the Issuer by the appropriate officers thereof in the manner contemplated hereby and by the Indenture, in a principal amount of up to \$18,500,000, shall represent the approved form of the Project Bonds of the Issuer.

(c) Place of Payment. Bond service charges on Project Bonds shall be payable, without deduction for services of the Paying Agent, in the manner provided in the Project Bonds.

(d) Execution. The Project Bonds shall be executed by the Mayor and City Clerk of the Issuer, provided that either or both of such signatures may be facsimiles.

(e) Maximum Rate. The per annum interest rate applicable to the Project Bonds shall at no time exceed the maximum rate allowable by the laws of the Commonwealth of Kentucky.

Section 4. Terms of all Project Bonds and Additional Bonds. All Project Bonds and Additional Bonds shall bear such designation as may be necessary to distinguish them from Bonds of any other series. Bond service charges on all Project Bonds and Additional Bonds shall be payable in lawful money of the United States of America. Bonds shall be issued as fully registered bonds. All Project Bonds and Additional Bonds shall be negotiable instruments within the meaning of Chapter 103 of the Kentucky Revised Statutes, subject to applicable provisions for registration, and shall express on their faces the purpose for which they are issued and such other statements or legends as may be required by law.

All Project Bonds and Additional Bonds shall be executed in the manner provided in the Bond Legislation authorizing their issuance or in the manner provided by the applicable law in effect at the time of their issuance. In case any officer whose signature or a facsimile of whose signature shall appear on any Bonds shall cease to be such officer before the issuance, authentication or delivery of such Project Bonds and Additional Bonds, such signature or such facsimile shall nevertheless be valid and sufficient for all purposes, the same as if he or she had remained in office until that time.

Any notice of call for redemption of all Project Bonds shall be given in the manner provided in the Indenture. If Project Bonds and Additional Bonds or portions of fully registered Project Bonds and Additional Bonds are duly called for redemption and if on such redemption date moneys for the redemption of all the Project Bonds and Additional Bonds to be redeemed, together with accrued interest to the redemption date, shall be held by the Trustee or Paying Agents so as to be available therefor, then from and after such redemption date such Project Bonds and Additional Bonds or portions of fully registered Bonds shall cease to bear interest.

Section 5. Security Pledged for Project Bonds. The Project Bonds shall be payable solely from the Revenues and secured by, among other things, a pledge of and lien on moneys deposited in the Construction Fund and the Bond Fund, and a pledge and assignment of other moneys constituting Revenues, and further secured by the Indenture, and anything in this Bond

Legislation, the Project Bonds, the Agreement, and Indenture to the contrary notwithstanding, neither this Bond Legislation, the Project Bonds, the Agreement, nor the Indenture shall constitute a debt or a pledge of the faith and credit of the Issuer or of the State or any political subdivision thereof and the holders or owners of the Bonds shall have no right to have taxes levied by the General Assembly of the State or the taxing authority of the Issuer or of any other political subdivision of the State for the payment of the principal of, premium, if any, or interest on the Project Bonds, but such Bonds are payable solely from the Revenues and the Bonds shall contain on the face thereof a statement to that effect.

Section 6. Sale of Project Bonds; Allocation of Purchase Price. The Legislative Authority is hereby authorized and directed to offer for sale the Project Bonds to Ovation Music Hotel, LLC (in its role as purchaser of the Bond, the "Purchaser"), for purchase by the Purchaser at the price or prices set forth in the Bond Purchase Agreement, plus accrued interest, if any, in accordance with the terms and provisions of this Bond Legislation, and to make the necessary arrangements on behalf of the Issuer with the Purchaser to establish the date, location, procedure and conditions for the delivery of the Project Bonds to the Original Purchaser. The Mayor and City Clerk are further hereby authorized and directed to take all steps necessary to effect due authentication, delivery and security of the Project Bonds under the terms of this Bond Legislation, Bond Purchase Agreement and the Indenture, and it is hereby determined that the aforesaid purchase price and the interest rate for the Project Bonds and the manner of sale, as provided in this Bond Legislation, are in compliance with all legal requirements. The City Clerk shall furnish to the Purchaser a true and certified transcript of proceedings with reference to the issuance of the Project Bonds, along with such information from his or her records as is necessary to determine the regularity and validity of the issuance of said Project Bonds.

There is hereby created by the Issuer and ordered maintained as a separate deposit account (except when invested as hereinafter provided) in the custody of the Trustee a trust fund to be designated "City of Newport, Kentucky-Ovation Music Hotel Construction Fund" (herein also sometimes called the "Construction Fund"). After payment of the costs of issuance related to the Bonds, the Project Bond proceeds shall be used to fund the Construction Fund. Moneys in the Construction Fund shall be disbursed by the Trustee in accordance with the provisions of the Agreement, and the Trustee is hereby authorized and directed to issue its check, transfer funds via wire transfer or credit accounts for each disbursement required by the provisions of the Agreement. The Issuer covenants and agrees promptly to take whatever action, if any, is necessary in approving and ordering all such disbursements.

The moneys to the credit of the Construction Fund shall, pending application thereof as above set forth, be subject to a lien and charge in favor of the holders of the Project Bonds, but only to the extent of their interest therein.

Section 7. Source of Payment - Bond Fund. As provided in the Agreement, moneys sufficient in time and amount to pay the Bond service charges with respect to the Project Bonds as they come due are to be paid by the Company directly to the Trustee, including Lease Payments for the account of the Issuer and deposited in an appropriate account in the Bond Fund.

There is hereby created by the Issuer and ordered maintained, as a separate deposit account (except when invested as hereinafter provided) in the custody of the Trustee, a trust fund

to be designated "City of Newport, Kentucky-Ovation Music Hotel Revenue Bond Fund" (herein called the "Bond Fund"). The Bond Fund (and accounts therein provided for in the Indenture or in the Agreement) and the moneys and investments therein are hereby pledged to and shall be used for the payment of Bond service charges, all as provided herein and in the Indenture and the Agreement, provided that no part thereof (except as may otherwise be provided for herein and in the Indenture or the Agreement) shall be used to redeem or purchase, prior to maturity, any Project Bonds. The Trustee is authorized and directed to create and maintain appropriate accounts in the Bond Fund with respect to each series of Project Bonds and Additional Bonds consistent with their respective payment and security (priority) provisions.

On or before each date when Bond service charges are due and payable, the Trustee shall transmit from moneys in the Bond Fund applicable thereto to any other Paying Agents, as appropriate, amounts sufficient to meet payments to be made by them of Bond service charges then to be due and payable; provided that to the extent the amount needed by any other Paying Agent is not sufficiently predictable, the Trustee may, but shall not be required to, make such credit arrangements with such Paying Agent as to permit meeting such payments.

There shall be deposited into the Bond Fund (and credited, if required by the Indenture or the Agreement, to appropriate accounts therein), as and when received, (a) all Lease Payments, to the extent not required to pay Base Rent due under the Agreement which has not been paid and (b) all other Revenues, except those amounts required by the Indenture or the Agreement to be deposited in any other separate insurance or condemnation proceeds account.

The Issuer hereby covenants and agrees that so long as any of the Project Bonds are outstanding it will deposit or cause to be deposited in the Bond Fund, amounts sufficient in time and amount to pay the Bond service charges as the same become due and payable, and to this end the Issuer covenants and agrees that, so long as any Project Bonds are outstanding, it will diligently and promptly proceed in good faith and use its best efforts to enforce the Agreement, and that, should there be an event of default under the Agreement, the Issuer shall fully cooperate with the Trustee and with the Bondholders to protect fully the rights and security of the Bondholders hereunder. Nothing herein shall be construed as requiring the Issuer to use or apply to the payment of Bond service charges any funds or revenues from any source other than revenues or to expend any of its own funds to enforce the Agreement.

Notwithstanding anything herein to the contrary, the Issuer, Company, Purchaser and Trustee may enter into agreements that vary the method of payment of bond service charges, to the extent authorized by the Indenture.

Section 8. Covenants of Issuer. In addition to other covenants of the Issuer contained in this Bond Legislation and the Indenture, the Issuer further covenants and agrees as follows:

(a) Payment of Bond Service Charges. The Issuer will, solely from Revenues pay or cause to be paid the Bond service charges on each and all Project Bonds on the dates, at the places and in the manner provided herein, in the applicable Bond Legislation and in the Bonds.

(b) Performance of Covenants, Authority and Actions. The Issuer will at all times faithfully observe and perform all agreements, covenants, undertakings, stipulations and



provisions contained in the Bond Legislation, the Agreement, the Indenture, the Bond Purchase Agreement and in any and every Project Bond executed, authenticated and delivered under the Indenture, and in all proceedings of the Issuer pertaining to the Project Bonds, the Indenture, the Bond Purchase Agreement or the Agreement. The Issuer warrants and covenants that it is, and upon delivery of the Project Bonds will be, duly authorized by the Constitution and laws of the State, including particularly and without limitation the Act, to issue the Project Bonds and to execute the Indenture, the Bond Purchase Agreement and the Agreement to provide the security for payment of the Bond service charges in the manner and to the extent herein and in the Indenture set forth; that all actions on its part for the issuance of the Project Bonds and execution and delivery of the Indenture, the Agreement and the Bond Purchase Agreement have been or will be duly and effectively taken; and that the Project Bonds in the hands of the holders thereof will be valid and enforceable special obligations of the Issuer according to the terms thereof. Each provision of the Bond Legislation, the Indenture, the Agreement, the Bond Purchase Agreement and the Bonds is binding upon each such officer of the Issuer as may from time to time have the authority under law to take such actions as may be necessary to perform all or any part of the duties required by such provision; and each duty of the Issuer and of its officers undertaken pursuant to such proceedings for the issuance of the Project Bonds is established as a duty of the Issuer and of each such officer having authority to perform such duty, specifically enjoined by law and resulting from an office, trust, or station within the meaning of the Kentucky Revised Statutes, providing for enforcement by writ of mandamus.

(c) Revenues. Except as otherwise provided in the Bond Legislation, the Indenture and the Agreement, the Issuer will not create or suffer to be created any debt, lien or charge thereon, or make any pledge or assignment of or create any debt, lien or charge thereon, or make any pledge or assignment of or create any lien or encumbrance upon the Revenues, including the moneys in the Bond Fund and the Construction Fund other than the pledge and assignment thereof under this Bond Legislation, the Indenture and the Agreement.

(d) Recordings and Filings. The Issuer will, at the expense of the Company, cause (to the extent required by the laws of the State to perfect such instruments and/or the lien created thereby) all necessary financing statements, amendments thereto, continuation statements and instruments of similar character relating to the pledges and assignments made by it to secure the Project Bonds, to be recorded and filed in such manner and in such places and to the extent required by law in order to fully preserve and protect the security of the holders of the Project Bonds and the rights of the Trustee under the Indenture.

(e) Inspection of Project Books. All books and documents in the Issuer's possession relating to the Project or the Revenues shall at all times be open to inspection by such accountants or other agents of the Trustee or the Purchaser as the Trustee or the Purchaser may from time to time designate.

(f) Rights under Agreement. The Trustee, in its name or in the name of the Issuer, may, for and on behalf of the Bondholders, enforce all rights of the Issuer and all obligations of the Company under and pursuant to the Agreement, whether or not the Issuer is in default of the pursuit or enforcement of such rights and obligations.

(g) Maintenance of Agreement. The Issuer shall do all things and take all actions on its part necessary to comply with the obligations, duties and responsibilities on the part of the Issuer under the Agreement, and will take all actions within its authority to maintain the Agreement in effect in accordance with the terms thereof and to enforce and protect the rights of the Issuer thereunder, including actions at law and in equity, as may be appropriate. The Issuer shall not be required to expend its own funds for this purpose.

Section 9. Investment of Bond Fund and Construction Fund. Except as otherwise provided in the Indenture, moneys in the Bond Fund, and the Construction Fund shall be invested and reinvested by the Trustee in Eligible Investments, in accordance with and subject to the orders (if verbal, to be confirmed in writing) of the Authorized Tenant Representative with respect thereto, provided that investments of moneys in the Bond Fund shall mature or be redeemable at the option of the Trustee at the times and in the amounts necessary to provide moneys hereunder to pay Bond service charges as they fall due at stated maturity or by redemption or pursuant to any Mandatory Sinking Fund Requirements, and provided that each investment of moneys in the Construction Fund shall in any event mature or be redeemable at the option of the Trustee at such time as may be necessary to make timely payments from said Bond Fund. Any such investments may be purchased from the Trustee or its affiliates. In the absence of written direction from the Company with respect to investment of moneys held in the Funds, the Trustee is hereby directed to invest funds in money market mutual funds of the Trustee or its affiliates that qualify as Eligible Investments under the Indenture. The Trustee shall sell or redeem investments standing to the credit of the Bond Fund to produce sufficient moneys hereunder at the times required for the purpose of paying Bond service charges when due as aforesaid, and shall do so without necessity for any order on behalf of the Issuer and without restriction by reason of any such order. For purposes of the Indenture and this Bond Legislation, such investments shall be valued at face amount or market value, whichever is less.

Section 10. Indenture, Agreement, Home Office Payment Agreement and Bond Purchase Agreement. In order better to secure the payment of the Bond service charges as the same shall become due and payable; the Mayor and City Clerk are hereby authorized and directed, on behalf of the Issuer, to execute and deliver the Indenture, the Home Office Payment Agreement, the Agreement and the Bond Purchase Agreement in substantially the forms submitted to the Issuer, which instruments are hereby approved, with such changes therein not inconsistent with this Bond Legislation and not substantially adverse to the Issuer as may be permitted by the Act and approved by the officers executing the same. The approval of such changes by said officers, and that such are not substantially adverse to the Issuer, shall be conclusively evidenced by the execution of the Indenture, the Home Office Payment Agreement, the Agreement and the Bond Purchase Agreement respectively by such officers.

This Bond Legislation shall constitute a part of the Indenture as therein provided and for all purposes of said Indenture.

Section 11. Other Documents. The Mayor, City Clerk and City Manager are hereby further authorized and directed to execute financing statements, other assignments and any other agreements, documents and instruments as are, in the opinion of bond counsel to the Issuer, necessary or desirable to perfect the pledges set forth in the Indenture and to consummate the transactions provided for in the Indenture, the Agreement and the Bond Purchase Agreement.

Section 12. Compliance with Kentucky Revised Statutes. It is hereby found and determined that all formal actions of this Legislative Authority concerning and relating to the passage of this Bond Legislation were taken in an open meeting of this Legislative Authority, and that all deliberations of this Legislative Authority and of any of its committees, if any, that resulted in such formal action, were taken in meetings open to the public, in full compliance with applicable legal requirements of the Kentucky Revised Statutes.

Section 13. No Personal Liability. No recourse under or upon any obligation, covenant, acceptance or agreement contained in this Resolution, or in any Project Bonds, or in the Agreement, the Indenture, the Home Office Payment Agreement or the Bond Purchase Agreement, or under any judgment obtained against the Issuer or by the enforcement of any assessment or by any legal or equitable proceeding by virtue of any constitution or statute or otherwise, or under any circumstances, shall be had against any officer as such, past, present, or future, of the Issuer, either directly or through the Issuer, or otherwise, for the payment for or to the Issuer or any receiver thereof, or for or to any holder of any Project Bonds, or otherwise, of any sum that may be due and unpaid by the Issuer upon any of the Project Bonds. Any and all personal liability of every nature, whether at common law or in equity, or by statute or by constitution or otherwise, of any such officer, as such, to respond by reason of any act or omission on his or her part, or otherwise, for, directly or indirectly, the payment for or to the Issuer or any receiver thereof, or for or to the owner or any holder of any Project Bonds, or otherwise, of any sum that may remain due and unpaid upon any Project Bonds, shall be deemed to be expressly waived and released as a condition of and consideration for the execution and delivery of the Agreement, Indenture, Home Office Payment Agreement and the Bond Purchase Agreement and the issuance of the Project Bonds.

Section 14. Downtown Business District. The City hereby finds and affirms that the Project, as proposed by the Company, will be located within a city-designated downtown business district, per KRS 103.200(n).



SECTION II

That this Order shall be signed by the Mayor, attested to by the City Clerk, recorded and be effective upon adoption.

ADOPTED: \_\_\_\_\_, 2021

\_\_\_\_\_  
MAYOR THOMAS L. GUIDUGLI, JR.

ATTEST:

\_\_\_\_\_  
JANIE PATTERSON, CITY CLERK

**COMMISSIONERS ORDER NO. 2021-108**

**AN ORDER OF THE BOARD OF COMMISSIONERS OF THE CITY OF NEWPORT, KENTUCKY AUTHORIZING THE ISSUANCE OF UP TO \$130,000,000 PRINCIPAL AMOUNT OF CITY OF NEWPORT, KENTUCKY TAX INCREMENT REVENUE BONDS (CPX NEWPORT COMMERCIAL DEVELOPMENT, LLC PROJECT); AUTHORIZING THE EXECUTION AND DELIVERY OF A TRUST INDENTURE SECURING SUCH BONDS; AUTHORIZING THE EXECUTION AND DELIVERY OF A FINANCING AGREEMENT; AUTHORIZING THE EXECUTION AND DELIVERY OF A BOND PURCHASE AGREEMENT; AUTHORIZING THE EXECUTION AND DELIVERY OF A LEASE AGREEMENT; AUTHORIZING THE EXECUTION AND DELIVERY OF A TAX REGULATORY AGREEMENT; AND OTHER DOCUMENTS AND TAKING OTHER RELATED ACTION.**

WHEREAS, the City of Newport, Kentucky (the "Issuer") is specifically authorized and empowered by Sections 103.200 et seq. of the Kentucky Revised Statutes (the "Act") to issue its revenue bonds to assist in the financing of "buildings" or "industrial buildings," as those terms are defined in KRS 103.200, including any related financing costs, reserve funds, capitalized interest and other related costs and contingencies with respect thereto; and

WHEREAS, CPX Newport Commercial Development, LLC, a Kentucky limited liability company (the "Company"), the Issuer and the City of Newport Finance Department (the "Obligor") have determined to finance the development of the 4<sup>th</sup> Street/Central Avenue Development Area (the "Development Area"), which, among other things, provides for the development of public infrastructure including parking garages, public parks and plazas, roadway improvements, levee walls and land necessary therefor (collectively, the "Project"); and

WHEREAS, Corporex, through the Company, has evidenced a desire to have the costs of the Project and other financing costs including the current refunding of Series 2019 Bonds incident to the authorization, sale and issuance thereof, financed with the proceeds of the issuance and sale by the Issuer of City of Newport, Kentucky Tax Increment Revenue Bonds (CPX Newport Commercial Development, LLC Project) (the "Bonds") in one or more series; and

WHEREAS, (a) the Bonds will not constitute a general obligation, debt or bonded indebtedness or liability of the Issuer or of the Commonwealth of Kentucky or any agency or political subdivision thereof under the Constitution of the Commonwealth of Kentucky or the pledge of the faith and credit of the Issuer, the Commonwealth of Kentucky or any agency or political subdivision thereof or give rise to a general obligation or liability of, or a charge against, the general credit or taxing powers of the Issuer, the Commonwealth of Kentucky or any agency or political subdivision thereof, (b) the holders or owners thereof will not have the right to have taxes or excises levied by the Issuer, the Commonwealth of Kentucky or any agency or political subdivision thereof for the payment of principal of and any premium and interest on the Bonds, and (c) the only security pledged for the Bonds will be the independent revenues from a Financing Agreement between the Issuer and the Obligor (the "Financing Agreement"); and

WHEREAS, it is necessary and proper in connection with the financing of the Project, in accordance with the Act, that the Issuer (a) authorize the issuance of the Bonds for the purposes described herein, (b) authorize the execution and delivery of a Financing Agreement with the Company, (c) authorize the execution and delivery of a Trust Indenture (the "Trust Indenture") to secure the Bonds, (d) authorize the execution and delivery of a Lease Agreement (the "Lease") concerning the operation and management of the Project, (e) authorize the execution and delivery of a tax regulatory agreement (the "Tax Regulatory Agreement") with respect to the excludability of interest on a designated series of the Bonds from gross income for federal income tax purposes, (f) authorize the negotiated sale of the Bonds under the terms of a bond purchase and/or bond placement agreement (the "Purchase Agreement"), and (g) authorize the execution and delivery of related documents;

NOW, THEREFORE, BE IT ORDERED BY THE CITY OF NEWPORT, KENTUCKY, AS FOLLOWS:

### **SECTION I**

For the purposes set forth in the preamble, there is hereby resolved, authorized and directed the authorization, execution, sale, delivery and issuance of "City of Newport, Kentucky Tax Increment Revenue Bonds (CPX Newport Commercial Development, LLC Project)," to be dated as of the date and with an appropriate series designation as set forth in the Trust Indenture, hereinafter authorized, and in an aggregate principal amount of up to \$130,000,000, which may be issued in one or more series, taxable and tax-exempt, in the form and content, with any additional series designations, subject to the terms and specifications, to mature, to be subject to redemption and to bear interest, all as provided in the Trust Indenture.

### **SECTION II**

The Mayor and City Clerk of the Issuer (which, together with any other person as may be authorized by resolution are referred to as "Designated Officers") are hereby authorized, empowered and directed to execute and deliver on behalf of the Issuer the Financing Agreement, and the Lease, which Financing Agreement and Lease shall be in the forms required by the Act, to be completed and approved by the officer executing the same, such approval to be conclusively evidenced by such execution.

### **SECTION III**

The Designated Officers are hereby separately authorized to serve as the Authorized Issuer Representative for the purposes of the Financing Agreement, the Lease and the Trust Indenture herein authorized.

### **SECTION IV**

In order to provide for the authorization for, and to secure the Bonds to be issued pursuant to the Act, to finance the Project and pay necessary expenses incident thereto, and to prescribe the terms and conditions upon which the Bonds are to be secured, executed, authenticated, accepted and held, Designated Officers are hereby separately authorized, empowered and directed to execute and deliver, on behalf of the Issuer, the Trust Indenture between the Issuer and a corporate

trustee to be identified in the Trust Indenture, as Trustee for the Bonds (the “Trustee”), which Trust Indenture shall be in the form required by the Act, to be completed and approved by the officer executing the same, such approval to be conclusively evidenced by such execution.

## **SECTION V**

In order to provide for the excludability of interest on all or a portion of the Bonds from gross income for federal income tax purposes, the Designated Officers are hereby authorized, empowered and directed to execute and deliver, on behalf of the Issuer, one or more Tax Regulatory Agreements among the Issuer, the Trustee and the Company, each such Tax Regulatory Agreement to be in the form deemed appropriate by bond counsel, to be completed by bond counsel and approved by the officer executing the same, such approval to be conclusively evidenced by such execution.

## **SECTION VI**

The Issuer hereby covenants that it will restrict the use of the proceeds of any Bonds, the interest on which is to be excludable from gross income of the holders thereof for federal income tax purposes, hereby authorized in such manner and to such extent, if any, as may be necessary, after taking into account reasonable expectations at the time the debt is incurred, so that they will not constitute “arbitrage bonds” under Sections 103(b)(2) and 148 of the Internal Revenue Code of 1986, as amended, and the regulations prescribed thereunder. The Designated Officers are authorized and directed to give an appropriate certificate on behalf of the Issuer in reliance upon the Company, on the date of delivery of said Bonds for inclusion in the transcript of proceedings, setting forth the facts, estimates and circumstances and reasonable expectations pertaining to the use of the proceeds thereof and the provisions of said Sections 103(b)(2) and 148 and regulations thereunder.

## **SECTION VII**

In order to provide for the sale of the Bonds at a private, negotiated sale, the Designated Officers are hereby separately authorized and directed to execute and deliver on behalf of the Issuer, the Purchase Agreement providing for the sale of the Bonds, which Purchase Agreement shall be in a form required by the Act, to be completed and approved by the officer executing the same, such approval to be conclusively evidenced by such execution.

## **SECTION VIII**

The Designated Officers, for and on behalf of the Issuer, either together or individually, are hereby authorized, empowered and directed to effect the execution and delivery of the Financing Agreement, the Lease, the Trust Indenture, the Tax Regulatory Agreement, and the Purchase Agreement, the performance of all obligations of the Issuer under and pursuant to the Financing Agreement, the Lease, the Trust Indenture, the Tax Regulatory Agreement, the Purchase Agreement, the issuance, execution and delivery of the Bonds, and the performance of all other actions of whatever nature necessary to effect and carry out the authority conferred by this Ordinance and by the Financing Agreement, the Lease, the Trust Indenture, the Tax Regulatory Agreement, and the Purchase Agreement. The Designated Officers are hereby further authorized, empowered and directed for and on behalf of the Issuer to execute all customary papers, letters,

documents, certificates, forms or other instruments that may be required for the carrying out and effectuation of the authority conferred by this Order, the Financing Agreement, the Lease, the Trust Indenture, the Tax Regulatory Agreement, and the Purchase Agreement or to evidence said authority, including but not limited to financing statements and other security documents, and to exercise and otherwise take all action necessary to the full realization of the rights, accomplishments and purposes of the Issuer under the Trust Indenture, the Lease, and the Financing Agreement including, without limitation, the determination of the interest rate or rates, maturity dates and redemption provisions with respect to the Bonds, and to discharge all of the obligations of the Issuer under the Trust Indenture, the Lease, the Financing Agreement, and the Tax Regulatory Agreement.

#### **SECTION IX**

The provisions of this Order are hereby declared to be severable and, if any section, phrase or provision shall, for any reason, be declared invalid, such declaration of invalidity shall not affect the validity of the remainder of this Order.

#### **SECTION X**

No recourse shall be had for the payment of the principal of or premium or interest on any of the Bonds or for any claim based thereon or upon any obligation, covenant or agreement therein contained against any past, present or future officer, member, employee or agent of the Issuer or the Commonwealth of Kentucky or any agency or political subdivision thereof, as such, either directly or through the Issuer or the Commonwealth of Kentucky or any agency or political subdivision thereof, under any rule of law or equity, statute or constitution, or by the enforcement of any assessment or penalty or otherwise, and all such liability of any such officers, members, employees or agents as such shall be expressly waived and released as a condition of and consideration for the adoption of this Ordinance and the issuance of such Bonds.

#### **SECTION XI**

That this Order shall be signed by the Mayor, attested to by the City Clerk, recorded, and be effective upon adoption.

ADOPTED: December 13, 2021

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THOMAS L. GUIDUGLI, JR., MAYOR

ATTEST:

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JANIE PATTERSON, CITY CLERK



COMMISSIONERS ORDER NO. R-2021-109

AN ORDER OF THE BOARD OF COMMISSIONERS OF THE CITY OF NEWPORT, KENTUCKY AUTHORIZING AND APPROVING A CONTINUING CREDIT OF THE OCCUPATIONAL LICENSE FEE FOR NEW EMPLOYEES AS PART OF AN ECONOMIC DEVELOPMENT PROJECT BY ADT, LLC AS SUCCESSOR IN INTEREST TO DEFENDER SECURITY SYSTEM COMPANY UNDER THE KENTUCKY BUSINESS INVESTMENT PROGRAM AS PREVIOUSLY APPROVED

WHEREAS, the City previously granted Defender Security System Company (Defender) a credit of the occupational license fee payment requirement for new employees under the Kentucky Business Investment Program (KBI), authorized pursuant to Commissioners Ordinance No. 0-2009-013 adopted in November of 2009; and,

WHEREAS, subsequent thereto in 2019, which was unknown to the City, Defender Security System Company was sold to or merged with ADT, LLC (ADT) and now operates as a different corporate entity and,

WHEREAS, the corporate change necessitates an amendment in order for the new corporate entity to continue participation in the KBI Program; and,

WHEREAS, the original grant was for a period of ten (10) years to which ADT desires to continue for the time remaining since date of activation; and,

WHEREAS, ADT desires to continue participation in the KBI Program as originally set forth and granted to Defender of whom ADT is the successor in interest,

NOW, THEREFORE, BE IT ORDERED BY THE CITY OF NEWPORT, KENTUCKY, as follows:

SECTION I

That the City hereby authorizes a continuing credit of its Occupational License Fee payment requirement, pursuant to the KBI, as set forth in KRS 154.32-010 through 154.32-100, for the remainder of the original ten year period, beginning and ending as previously agreed to and stipulated in the Wage Assessment Agreement executed between the Kentucky Economic Development Finance Authority (KEDFA) and the approved company, being Defender Security System Company, now ADT, LLC, equal to 1.0% on the wages of their resident employees created as part of the Economic Development Project.

SECTION II

That this Order shall be signed by the Mayor, attested to by the City Clerk, recorded and effective upon adoption.

ADOPTED:\_\_\_\_\_

\_\_\_\_\_  
THOMAS L. GUIDUGLI, JR., MAYOR

ATTEST:

\_\_\_\_\_  
JANIE PATTERSON, CITY CLERK

KBI CHANGE

**COMMISSIONERS ORDER NO. R-2021-110**

**AN ORDER OF THE BOARD OF COMMISSIONERS OF THE  
CITY OF NEWPORT, KENTUCKY AUTHORIZING CITY  
MANAGER THOMAS J. FROMME TO EXECUTE A  
MEMORANDUM OF AGREEMENT WITH NEW RIFF  
DISTILLING, LLC FOR PARTICIPATION IN THE CITY OF  
NEWPORT'S JOB DEVELOPMENT INCENTIVE PROGRAM  
(JDIP) PURSUANT TO SECTION 37.212 ET. SEQ. OF THE  
CODE OF ORDINANCES**

**WHEREAS**, New Riff Distilling, LLC, pursuant to the provisions of Section 37.212 et. seq. of the Code of Ordinances of the City of Newport, Kentucky, having made application with the City of Newport for consideration in the City of Newport, Kentucky's Job Development Incentive Program (JDIP); and,

**WHEREAS**, the City of Newport, Kentucky Job Development Incentive Program Committee having met on December 3, 2021, and unanimously recommending approval of the request for participation in the City's JDIP from New Riff Distilling, LLC;

NOW, THEREFORE, IT IS HEREBY ORDERED BY THE CITY OF NEWPORT, KENTUCKY, as follows:

**SECTION I**

That, pursuant to Section 37.212 et. seq. of the Code of Ordinances of the City of Newport, Kentucky, City Manager Thomas J. Fromme is hereby authorized to execute a Memorandum of Agreement with New Riff Distilling, LLC for participation in the City of Newport's Job Development Incentive Program (JDIP), pursuant to the terms and conditions set forth therein, a copy of which is attached hereto and made a part hereof, as if fully set forth, and referred to herein by reference.

**SECTION II**

That this Order shall be signed by the Mayor, attested to by the City Clerk, recorded and effective upon adoption.

ADOPTED: December 13, 2021

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THOMAS J. GUIDUGLI, JR., MAYOR

ATTEST:

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JANIE PATTERSON, CITY CLERK



**COMMISSIONERS ORDER NO. R-2021-111**

**AN ORDER OF THE BOARD OF COMMISSIONERS OF THE  
CITY OF NEWPORT, KENTUCKY AUTHORIZING CITY  
MANAGER THOMAS J. FROMME TO ENTER INTO AND AN  
AGREEMENT WITH MADISON TREE CARE AND  
LANDSCAPING, INC FOR ZONAL TREE MAINTENANCE**

BE IT ORDERED BY THE BOARD OF COMMISSIONERS OF  
THE CITY OF NEWPORT, KENTUCKY

**SECTION I**

That City Manager, Thomas J. Fromme, shall be and is hereby authorized to enter into an Agreement with Madison Tree Care and Landscaping, INC for zonal tree maintenance with the City pursuant to the terms contained therein, said contract attached, hereto, made a part hereof and incorporated by reference.

**SECTION II**

That this Order shall be signed by the Mayor, attested to by the City Clerk, recorded, and be effective upon adoption.

ADOPTED: December 13, 2021

\_\_\_\_\_  
THOMAS L. GUIDUGLI JR., MAYOR

ATTEST:

\_\_\_\_\_  
JANIE PATTERSON, CITY CLERK

**COMMISSIONERS ORDER NO. R-2021-112**

AN ORDER OF THE BOARD OF COMMISSIONERS OF  
THE CITY OF NEWPORT, KENTUCKY ACCEPTING THE  
BID PROPOSAL OF IPS GROUP, INC. REGARDING  
SOFTWARE AND ADD ON EQUIPMENT TO THE CITY  
VEHICULAR PARKING KIOSKS

BE IT ORDERED BY THE BOARD OF COMMISSIONERS  
OF THE CITY OF NEWPORT, KENTUCKY, as follows:

**SECTION I**

That the City of Newport, Kentucky hereby accepts the software and add on equipment bid proposal of IPS Group, Inc. attached hereto, made a part hereof and incorporated by reference, in the amount of \$58,029.25 to be paid from the City's General Funds, regarding software and add on equipment to the City vehicular parking kiosks and further authorizing the City Manager Thomas J. Fromme to execute any necessary documentation in accordance therewith.

**SECTION II**

That this Order shall be signed by the Mayor, attested by the City Clerk, recorded and effective upon adoption.

ADOPTED: December 13, 2021

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THOMAS L. GUIDUGLI JR., MAYOR

ATTEST:

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JANIE PATTERSON, CITY CLERK

R-2021-113

AN ORDER OF THE BOARD OF COMMISSIONERS OF THE CITY OF NEWPORT,  
KENTUCKY AUTHORIZING THE CITY MANAGER TO EXECUTE A ONE KENTUCKY  
OPIOID SETTLEMENT MEMORANDUM OF UNDERSTANDING AND THE  
ACCOMPANYING SUBDIVISION (DISTRIBUTOR AND JANSSEN) SETTLEMENT  
PARTICIPATION FORMS FOR THE CITY'S PARTICIPATION IN THE NATIONAL  
OPIOIDS SETTLEMENT

WHEREAS, the City of Newport, Kentucky is political subdivision involved in the litigation against certain Defendants who are contributors of opioids within the City resulting in the availability of the drug and its abuse; and,

WHEREAS, the City has been advised by counsel of a proposed settlement of claims; and,

WHEREAS, the City has been presented with the details related to the proposed settlement of claims; and,

WHEREAS, the City has been advised by counsel to participate in the proposed settlement of claims, to "opt in" and participate therein and to execute the requisite Memorandum of Understanding and accompanying Forms associated therewith in order to effectuate the same; and,

WHEREAS, with the City having been previously advised by the Office of the Attorney General of the Commonwealth of Kentucky regarding the National Opioids Settlement and the request for City participation therein in order to receive future settlement funds; and,

WHEREAS, with the City having undertaken the affirmative steps necessary to "opt in" to the Settlement and having successfully registering the City with the for inclusion and participation therein,

NOW, THEREFORE, BE IT ORDERED BY THE BOARD OF COMMISSIONERS OF THE CITY OF NEWPORT, KENTUCKY, as follows:

SECTION I

That City Manager, Thomas J. Fromme, shall be and is hereby authorized to execute A One Kentucky Opioid Settlement Memorandum of Understanding and the accompanying Subdivision (Distributor and Janssen) Settlement Participation Forms, copies of which are attached hereto, made a part hereof, and incorporated by reference, for the City's inclusion and participation in the National Opioids Settlement pursuant to the terms and conditions contained therein.

SECTION II

That this Order shall be signed by the Mayor, attested to by the City Clerk, recorded and be effective upon adoption.

ADOPTED: December 13, 2021

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THOMAS L. GUIDHGLI, JR, MAYOR

ATTEST:

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JANIE PATTERSON, CITY CLERK

**COMMISSIONERS ORDINANCE O-2021-021**

**AN ORDINANCE OF THE BOARD OF COMMISSIONERS  
OF THE CITY OF NEWPORT, KENTUCKY ENACTING AND  
ADOPTING A SUPPLEMENT TO THE CODE OF  
ORDINANCES OF THE CITY OF NEWPORT, KENTUCKY**

WHEREAS, American Legal Publishing Corporation of Cincinnati, Ohio has completed the 2020 S-12 Supplement to the Code of Ordinances of the City of Newport, which supplement contains all Ordinances of a general nature enacted since the prior supplement to the Code of Ordinances of this municipality; and

WHEREAS, American Legal Publishing Corporation has recommended the revision or addition of certain sections of the Code of Ordinances which are based on or make references to sections of the Kentucky Revised Statutes; and,

WHEREAS, it is the intent of the City of Newport to accept these updated sections in accordance with the changes of the law of the Commonwealth of Kentucky;

NOW, THEREFORE, BE IT ORDAINED by the City of Newport:

**SECTION I**

That the 2020 S-2012 supplement to the Code of Ordinances of the City of Newport, Kentucky, as submitted by American Legal Publishing Corporation of Cincinnati, is hereby adopted by reference as if set out in its entirety.

**SECTION II**

That this Ordinance shall be signed by the Mayor, attested to by the City Clerk, recorded, published and effective upon publication.

PASSED 1<sup>st</sup> READING: December 13, 2021

PASSED 2<sup>nd</sup> READING:

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THOMAS L. GUIDUGLI, JR., MAYOR

ATTEST:

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JANIE PATTERSON, CITY CLERK

PUBLISHED: Online on the City website, [www.newportky.gov](http://www.newportky.gov), with URL reference published in the Campbell County Recorder the \_\_\_\_\_ of \_\_\_\_\_, 2021 per KRS 424.145